

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 June 2003

CASE NO.: 2003-ERA-0003

In the Matter of:

**TERRY E. GEARY,
Complainant,**

v.

**INDIANA MICHIGAN POWER COMPANY,
Respondent.**

Before: PAMELA LAKES WOOD
Administrative Law Judge

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection ("whistleblower") provisions of the Energy Reorganization Act (ERA), 42 U.S.C. § 5851, 29 C.F.R. Part 24. The parties are Complainant Terry E. Geary ("Complainant") and Respondent Indiana Michigan Power Company ("Respondent" or "I&M"). A hearing scheduled for June 17 to 20, 2003 was canceled because the parties reached a settlement. *See* 29 C.F.R. § 18.9. Under cover letter of June 16, 2003 from Respondent's counsel, filed on the same date, the parties submitted to the undersigned a Confidential Settlement Agreement, Waiver and General Release [hereafter "Settlement Agreement"] signed by the parties together with Complainant's Motion to Dismiss with Prejudice Based on Voluntary Settlement. In the cover letter, Respondent Indiana Michigan Power Company, through counsel, asserts that "the settlement agreement contains nonpublic confidential commercial information, the disclosure of which would cause substantial competitive harm to I&M," pursuant to 29 C.F.R. § 70.26(b), and requests that the settlement agreement be treated in accordance with that provision, "and with the procedures specified in the February 1, 2001 memorandum of the Office of Administrative Law Judges titled 'DOL Review of Whistleblower Settlements.'" (The cited memorandum has been revised effective April 29, 2003, available at www.oalj.dol.gov.)

In accordance with the request of the parties and the referenced Office of Administrative Law Judges memorandum, the Settlement Agreement is being maintained in an envelope marked "PREDISCLOSURE NOTIFICATION MATERIALS," and counsel's correspondence of June 16,

2003 will be associated with the envelope. A copy of the Settlement Agreement will also be placed in an envelope so marked and sent to the Deputy Associate Solicitor, Division of Fair Labor Standards, but will not be served upon the other parties. However, the parties are advised that records in whistleblower cases are agency records which the agency must make available for public inspection and copying under the Freedom of Information Act (FOIA), 5 U.S.C. §552, unless exempt, and the Department of Labor must respond to any request to inspect and copy the record of this case as provided in the FOIA. As the Administrative Review Board (ARB) has noted: "If an exemption is applicable to the record in this case or any specific document in it, the Department of Labor would determine at the time a request is made whether to exercise its discretion to claim the exemption and withhold the document. If no exemption were applicable, the document would have to be disclosed." *Seater v. Southern California Edison Co.*, 1995-ERA-13 (ARB Mar. 27, 1997).

Having reviewed the Settlement Agreement, I find that it is a fair, adequate, and reasonable settlement of the complaint in this matter. Accordingly,

IT IS HEREBY RECOMMENDED that the Settlement Agreement be, and hereby is, **APPROVED** and that the complaint of Terry E. Geary in the above-captioned matter be, and hereby is **DISMISSED WITH PREJUDICE**.

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PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. To be timely filed, a petition for review must be filed **within ten (10) business days** of the date of this Recommended Decision and Order and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. §§ 24.7, 24.8.